SUPREME COURT, U. S.
MAR 2 1959
JAMES R. BROWNING, Clerk

No. 178

IN THE

Supreme Court of the United States

October Term, 1958

SS MONROSA, HER ENGINES, TACKLE, ETC., AND NAVIGAZIONE ALTA ITALIA, *Petitioners*

-versus-

CARBON BLACK EXPORT, INC., *Respondent*

ON WRIT OF CERTIORARI
To the United States Court of Appeals
for the Fifth Circuit

REPLY FOR PETITIONERS TO BRIEF OF AMICUS CURIAE

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The contentions made and the fears expressed by the Amicus Curiae[1] are all founded and predicated on two

[1] Briefly summarized they are:
1. A shipper has no protection against such an agreement as this to litigate claims for cargo damage in Italy.
2. The agreed upon forum may not apply the United States Carriage of Goods by Sea Act.
3. The agreed upon forum may resolve any conflicts in favor of foreign law.
4. The agreed upon forum may apply a foreign limitation of liability statute and thus reduce cargo's possible recovery.

wholly unfounded assumptions on the part of the Amic Curiae. These are:

1. That American Courts will not perform the judicial function and require any such agreement as place of litigation to be reasonable under the facts a particular case, and

2. That notwithstanding the express incorporati of the United States Carriage of Goods by Sea A in the bill of lading, that the foreign courts w apply foreign law rather than the law specifical called for by the contract of carriage.

Thus, the Amicus Curiae joins Respondent in its affro to the integrity of the American Judiciary by in effe saying that American Courts will not perform their judici function in determining the reasonableness of any su agreement so as to fully and adequately protect not on the rights of an American shipper but the rights of foreign shipowner as well. We submit that all of the fea expressed by the Amicus Curiae quickly pale into insi nificance once the reasonableness of the agreement is le to the sound discretion of the American Judiciary. Pet tioners, and we submit all reputable foreign shipowner are perfectly willing to leave the reasonableness of ar such agreement to the American Courts.

The Amicus Curiae makes the same basic error th Respondent does, for it views this case as one that, und all circumstances and all fact situations, will automatical permit a foreign shipowner to obtain an order directin that a cargo claim be asserted in the forum agreed upo in the bill of lading. Admittedly, Petitioners do not see

any such blanket ruling, but only that where such an agreement is in fact reasonable under the facts and circumstances of a particular case such as is true here, that the agreement of the parties with respect to the forum be enforced.

The Amicus Curiae's apparently more substantial concern, however, as reflected by its Points II, III and IV, is that the agreed upon forum may not apply the United States Carriage of Goods by Sea Act, that the agreed upon forum will apply foreign law, and that in applying such foreign law the limitation statutes might reduce the amount of recovery by cargo claimants.

For these fears of the Amicus Curiae to be justified, this Court must assume not only that American Courts will not properly consider the reasonableness of the agreed upon forum, but that the agreed upon forum will completely ignore a clause normally found in most bills of lading such as Clause 32 of the bill of lading in this case which expressly provides that the bill of lading has effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, and that if any term in the bill of lading is repugnant to the United States Carriage of Goods by Sea Act to any extent, that term shall be void. (R. 25).[2]

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[2] Clause 32 reads in full as follows:

"This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, approved April 16, 1936, which shall be deemed to be incorporated herein, and nothing herein contained shall be deemed a surrender by the carrier of any of its rights or immunities or an increase of any of its responsibilities or liabilities under said Act. If any term of this bill of lading be repugnant to said Act to any extent, such term shall be void to that extent, but no further.

We do not believe that this Court will base its decision in this case on the assumption that the agreed upon forum in Italy will not enforce the provisions contained in the bill of lading as written. To decide this case on the basis of the fears of the Amicus Curiae would require this Court to hold that the agreed upon forum would completely disregard Clause 32 of the bill of lading and apply the Italian law in its entirety. We do not believe this Court will take judicial notice that such will occur or assume that the Italian Court will not adjudicate the matter on the basis of the contract between the parties.

With particular reference to Points III and IV of the brief of the Amicus Curiae where concern is expressed about possible recovery being limited by the foreign law, in this case, at least, any provision of the bill of lading that might invoke foreign law is expressly made void by Clause 32.

Here, again, these fears can also be controlled by our own judiciary in considering the reasonableness of the agreement with respect to the forum. If any such limiting results are likely to occur, the discretion vested in the American Courts is more than ample to protect the shippers.

Conclusion

For the reason stated, the brief of the Amicus Curiae in support of the Respondent in fact offers no assistance or reasonable basis on which the judgment of the Court

of Appeals should be affirmed. It is submitted that the order of the District Court should be reinstated.

Respectfully submitted,

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